

112.

Counsel for Plaintiff in Error.

Plaintiffs in error maintain that the statute is class legislation which abridges their rights and privileges, that it deprives them of the equal protection of the laws and also of their property without due process of law—all in violation of the Fourteenth Amendment.

Manifestly, the purpose of the State was to prevent certain evils incident to the business of commission merchants in farm products by regulating it. Many former opinions have pointed out the limitations upon powers of the States concerning matters of this kind, and we think the present record fails to show that these limitations have been transcended. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342; *Brazee v. Michigan*, 241 U. S. 340; *Adams v. Tanner*, 244 U. S. 590.

The judgment of the court below is

Affirmed.

NICOULIN *v.* O'BRIEN.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 113. Submitted October 21, 1918.—Decided December 9, 1918.

The territorial limits of Kentucky extend across the Ohio River to low-water mark on the Indiana side, and no limitation on the power of Kentucky to protect fish within those limits by proper legislation resulted from the establishment of concurrent jurisdiction by the Virginia Compact.

172 Kentucky, 473, affirmed.

THE case is stated in the opinion.

Mr. Augustus Everett Willson for plaintiff in error.
Mr. Richard Priest Dietzman and *Mr. Edmund Andrew Larkin* were also on the brief.

Mr. D. A. Sachs, Jr., for defendant in error. *Mr. Jos. G. Sachs, Jr.*, was also on the brief.

Memorandum opinion by MR. JUSTICE McREYNOLDS.

Plaintiff in error was adjudged guilty of violating the prohibition of a Kentucky statute by seining for fish in the Ohio River south of low-water mark on the Indiana side. 172 Kentucky, 473. We are asked to hold that by reason of the Virginia Compact (13 Hening's Statutes at Large, c. 14, pp. 17, 19), Kentucky had no power to regulate fishing in the river at that point without Indiana's concurrence. The provision relied upon is this: "Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this Commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this Commonwealth and of the proposed state on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river."

The territorial limits of Kentucky extend across the river to low-water mark on the northerly shore. *Indiana v. Kentucky*, 136 U. S. 479, 519. And we think it clear that no limitation upon the power of that Commonwealth to protect fish within her own boundaries by proper legislation resulted from the mere establishment of concurrent jurisdiction by the Virginia Compact. See *Wedding v. Meyler*, 192 U. S. 573; *Central R. R. Co. v. Jersey City*, 209 U. S. 473; *Nielsen v. Oregon*, 212 U. S. 315; *McGowan v. Columbia River Packers' Assn.*, 245 U. S. 352.

The judgment below is

Affirmed.